

Remarks

1. Summary of the Office Action

In the Final Office Action mailed July 20, 2010, the Examiner rejected claims 9-10, 21, and 23 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Pub. No. 2002/0177413 (Jouppi) in view of United States Patent No. 7,254,141 (Desai) and United States Patent No. 6,754,189 (Cloutier), rejected claims 11 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Jouppi, Desai, and Cloutier and further in view of United States Patent App. No. 2003/0058871 (Sastry), rejected claims 17-18 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Jouppi, Desai, and Cloutier and further in view of United States Patent Application No. 2008/0056226 (Zhao).

2. Summary of the Claims

By this response, Applicants have not amended any of the claims, but rather rely upon the arguments, as set forth below.

3. Interview Summary

Applicants thank the Examiner for conducting the interview on 8/25/10. No demonstrations were conducted, and no exhibits were shown. Participating in the interview was Applicant's representative Daniel R. Bestor, and Examiner Jutai Kao. During the Interview, Applicants explained how amended claims 9 and 11 distinguished over the cited references of record. Specifically, Applicants noted that the Jouppi reference discloses considering mobile terminal resources, but not wireless medium resources. Additionally, Applicants noted that Desai, and other switch-related cited references, are substantially different from end-user terminals that do not exhibit any exclusive control over the transmission medium (whereas switches have exclusive control over the transmission medium between the input ports and output ports).

Applicants noted that the claims explicitly require a “first wireless station receiving a request for a new data link having a first channel capacity at a first priority level generated from a first application at the first station.” (Emphasis added). Applicants noted that switches, on the other hand, route data packets that are not generated at the switch, but have already been generated elsewhere and transmitted over at least a first network link portion to reach the switch. Examiner Kao stated that he would review the references and reconsider his rejections. No agreement regarding allowability was reached.

4. The Examiner did not establish a *prima facie* case of obviousness of claims 9-10, 21, and 23 in view of the cited Jouppi, Desai, and Cloutier references.

As set forth above, in the Final Office Action the Examiner rejected claims 9-10, 21, and 23 under 35 U.S.C. § 103(a). Applicants respectfully submit that the Examiner did not establish a *prima facie* case of obviousness of the pending claims, for at least the reasons that the Jouppi reference fails to disclose what the Examiner relied upon the reference for disclosing, and furthermore, that one of ordinary skill would not have modified the Jouppi reference in the manner asserted by the Examiner, in view of the teachings of the secondary references.

First, Applicants respectfully submit that the Jouppi reference, exclusively relied upon by the Examiner for purportedly teaching “the first wireless station receiving a request for a new data link having a first channel capacity at a first priority level generated from a first application at the first station; the first wireless station determining an available free channel capacity of the wireless transmission medium...” does not, in fact, teach what the Examiner relies upon the reference for teaching. As set forth on pages 4-5 of the Office Action, the Examiner relied upon paragraph 0037 of Jouppi for teaching this limitation. Paragraph 0037 of Jouppi states, in part:

“For all single applications or connections, different QoS parameters may be in use. In such a case, when setting up a new connection in the wireless terminal MT1, the QoS levels of all the active connections are preferably considered

before setting up a new connection. In a preferred embodiment of the invention, the following steps are taken. The application transmits information about the need to set up a connection and the quality of service desired for the connection, to the execution environment 403. After this, the execution environment 403 of the application checks how much resources of the wireless terminal MT1 are simultaneously used by other active connections. On the basis of this checking, the execution environment 403 examines if the wireless terminal has sufficient resources available to comply with the QoS requirements by the new connection. If the execution environment 403 determines that the requested quality of service can be achieved in view of the resources of the wireless terminal MT1, it is possible to start connection set-up signalling [sic] for a new connection with the mobile communication network..." (emphasis added).

As set forth in paragraph 0037, quoted above, Jouppi teaches determining whether the wireless terminal MT1 has sufficient resources to meet a QoS requirement. This portion of the Jouppi fails, however, to disclose the claim limitation "the first wireless station receiving a request for a new data link having a first channel capacity at a first priority level generated from a first application at the first station; the first wireless station determining an available free channel capacity of the wireless transmission medium..." (emphasis added).

Specifically, Jouppi's disclosure of an execution environment that determines whether the wireless terminal MT1 itself has sufficient resources to meet the QoS requirements of a new request is not equivalent to the claimed "the first wireless station receiving a request for a new data link having a first channel capacity at a first priority level generated from a first application at the first station; the first wireless station determining an available free channel capacity of the wireless transmission medium..." (Emphasis added). This is further supported by the disclosure in paragraph 0029 of Jouppi, which discloses that the "function of the execution environment 403 in the wireless terminal is, for example, to determine the requirements related to the quality of service of the application and to compare them with the properties 401 of the wireless terminal MT1. This information includes, for example, the available memory space, the properties of the

display, such as the resolution, the properties of the modem, and the classification of the terminal.” Nothing in this description of terminal MT1 capabilities teaches or suggests “the first wireless station receiving a request for a new data link having a first channel capacity at a first priority level generated from a first application at the first station; the first wireless station determining an available free channel capacity of the wireless transmission medium...” (Emphasis added).

Furthermore, Jouppi teaches that once it is determined that the terminal MT1 itself has sufficient resources to handle a new request, paragraph 0034 of Jouppi describes the actual method of determining whether the wireless medium has sufficient capacity. As described in paragraph 0034, the terminal MT1 transmits a connection request to the mobile communication network. The mobile communication network then “examines whether the mobile communication network is capable of providing the quality of service requested for the connected at the time” and can accept or reject the connection request. Accordingly, and in contrast to the express limitations of the currently pending claims, Jouppi explicitly teaches that it is the mobile communication network that determines whether there is “available free channel capacity of the wireless transmission medium” sufficient to meet the request.

For at least the reason that the Examiner relied upon the Jouppi reference for a teaching that the reference does not actually make, Applicants respectfully submit that the Examiner did not make out a *prima facie* case of obviousness. Accordingly, Applicants respectfully request that the Examiner’s rejections, relying upon the Jouppi reference, be withdrawn after-final.

Additionally, Applicants respectfully submit that one of ordinary skill would not have modified Jouppi in view of the Desai reference. The Desai reference is directed to an intermediate switch that “receives [a] set-up message” initially created at an external terminal device 10 and having a destination of another external terminal device 12, and “determines whether the available

priority bandwidth of the requested priority exceeds the requested bandwidth.” Furthermore, if “the available priority bandwidth for the requested priority does not exceed the requested bandwidth, then the switch rejects the connection to provide a fast release.” (See the Abstract of the Invention section of Desai). The Examiner stated on page 6 of the Final Office Action that “although Desai discloses the operation for requests received by a switch, Jouppi’s wireless station is acting as a switch for the connections made by the applications of the wireless station, therefore it would be obvious to look to Desai’s method of managing connections in Jouppi’s invention.”

First, Applicants respectfully submit that the terminal MT1 of Jouppi is not operating as a switch. It is an end terminal that generates original source messages and transmits them onto the wireless medium, or receives messages as a final destination terminal from the wireless medium. It does not act as an intermediary device and route messages from an external source device to an external destination device, and does not exhibit full control over the transmission medium as the switch in Desai does. The terminal MT1 of Jouppi is more akin to the Terminals 10, 12 in Desai, not any one of the “Switches A-D” in Figure 1 of Desai. (See, for example, Desai’s definition of a switch in column 1, lines 19-33).

Furthermore, Desai teaches a switch that determines whether it has sufficient internal transmission medium bandwidth (all under its own control) between its input and output ports to accept a new request. As set forth above, Jouppi, at most, discloses a terminal MT1 that does not have complete control over the transmission medium between it and the wireless service provider. The Examiner has not provided any logical reasoning with rational underpinnings as to how, or why, the Jouppi reference would be modified or could be modified by the Desai reference to reach the limitations of the pending claims, beyond the conclusory statement noted above that the wireless terminal MT1 of Jouppi “acts a switch.” Applicants respectfully submit that the rejection

thus fails to meet the requirements of M.P.E.P. §§ 2142 and 2143. In any event, and as noted earlier, Jouppi teaches relying upon the wireless service provider to determine whether to create the requested data connection. Thus, even if combined, it is the network service provider that would be modified by Desai, not the terminal MT1.

For at least all these reasons, Applicants respectfully submit that the Examiner can not establish a *prima facie* case of obviousness of independent claim 9. For at least the reason that dependent claims 10, 21, and 23 inherit all of the limitations of independent claim 9, Applicants submit that these claims are also now in condition for allowance.

The Cloutier reference, cited by the Examiner for purportedly teaching “[a] first wireless station delaying the establishment of the new data link for a first period of time,” is similarly deficient. Cloutier teaches that a new user may transmit a new data request to a base station. The base station must then “determine the resources necessary to accommodate the needs of the user.” If the base station determines that insufficient resources are available, the base station rejects the new connection and the user must try again later. Similar to the Jouppi reference, it is not the data link initiating device (the new user) that is determining that “the free channel capacity at the first priority level is less than the requested first channel capacity” and, as a result, “delaying the establishment of the new data link for a first period of time.” Rather, and similar to Jouppi, it is some other device (the base station in Cloutier) on the other side of the transmission medium that is deciding whether to create the new link or not, and whether to delay the link or not.

For at least this reason also, Applicants respectfully submit that the Examiner can not establish a *prima facie* case of obviousness of independent claim 9. For at least the reason that dependent claims 10, 21, and 23 inherit all of the limitations of independent claim 9, Applicants submit that these claims are also now in condition for allowance.

5. Amended claims 11 and 19 do not reasonably or logically flow from the teachings of the cited Desai, Cloutier, and Sastry references

As set forth above, in the last Final Office Action the Examiner rejected claims 11 and 19 under 35 U.S.C. § 103(a). Applicants respectfully submit that claims 11 and 19 inherit all of the limitations of independent claim 9, now believed in condition for allowance. For at least the reason that the Sastry reference does not compensate for the failed disclosure and/or teaching of Jouppi, Desai, and Cloutier, Applicants respectfully submit that claims 11 and 19 are now also in condition for allowance.

6. Claims 17-18 and 22 do not reasonably or logically flow from the teachings of the cited Jouppi, Desai, Cloutier, and Zhao references

As set forth above, in the Final Office Action the Examiner rejected claims 17-18 and 22 under 35 U.S.C. § 103(a). Applicants respectfully submit that claims 17-18 and 22 inherit all of the limitations of independent claim 9, now believed in condition for allowance. For at least the reason that the Zhao reference does not compensate for the failed disclosure and/or teaching of Jouppi, Desai, and Cloutier, Applicants respectfully submit that claims 17-18 and 22 are now also in condition for allowance.

7. Conclusion

Applicants submit that all pending claims are in condition for allowance and respectfully requests favorable reconsideration and allowance of all of the pending claims. Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-2125.

Respectfully submitted,

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Date: September 17, 2010

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